

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 1875\*  
Select Committee on Government and Election Reform Committee Substitute  
Adopted 7/7/08  
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Short Title: Clarify Auditor Hotline Authority/SEC. (Public)

Sponsors:

Referred to:

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO RECODIFY THE STATE AUDITOR'S HOTLINE AUTHORITY, TO CLARIFY THE AUTHORITY OF THE STATE ETHICS COMMISSION WITH REGARDS TO REFERRALS FROM THE STATE AUDITOR, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 147-64.6(c)(16) reads as rewritten:

"(16) The Auditor shall be responsible for receiving reports of allegations of the improper governmental activities ~~set forth in G.S. 126-84.~~ as provided in G.S. 147-64.6B. The Auditor shall adopt policies and procedures necessary to provide for the investigation or referral of these allegations. ~~The Auditor shall provide a telephone hotline to receive such allegations and informant may choose whether to remain anonymous. The Auditor shall implement the necessary policies and procedures to investigate hotline allegations and recommend appropriate action. When the allegation involves issues of substantial and specific danger to the public health and safety, the Auditor shall notify the appropriate agency immediately. In addition, the Auditor shall publicize the hotline number periodically and shall report findings to the agencies involved.~~

~~All records maintained by the State Auditor which involve unsubstantiated allegations of improper governmental activities set forth in G.S. 126-84 shall be destroyed within four years from the date such allegation was received."~~

**SECTION 1.(b)** Article 5A of Chapter 147 is amended by adding a new section to read:

**"§ 147-64.6B. Reports of improper governmental activities.**

1 (a) The Auditor shall provide various means, including a telephone hotline,  
2 electronic mail, and Internet access to receive reports of allegations of improper  
3 governmental activities. The Auditor shall periodically publicize the hotline telephone  
4 number, electronic mail address, Internet Web site address, and any other means by  
5 which the Auditor may receive reports of allegations of improper governmental  
6 activities. Individuals who make a report under this section may choose to remain  
7 anonymous until the individual affirmatively consents to having his or her identity  
8 disclosed.

9 (b) The Auditor shall investigate reports of allegations of improper governmental  
10 activities of State agencies and State employees within the scope of authority set forth in  
11 G.S. 147-64.6, including misappropriation, mismanagement, or waste of State  
12 resources, fraud, violations of State or federal law, rule or regulation by State agencies  
13 or State employees administering State or federal programs, and substantial and specific  
14 danger to the public health and safety. When the allegation involves issues of substantial  
15 and specific danger to the public health and safety, the Auditor shall notify the  
16 appropriate State agency immediately. When the Auditor believes that an allegation of  
17 improper governmental activity is outside the authority set forth in G.S. 147-64.6, the  
18 Auditor shall refer the allegation to the appropriate State agency responsible for the  
19 enforcement or administration of the matter for investigation. Reports of allegations of  
20 improper governmental activities of the following matters shall be referred as follows:

- 21 (1) Allegations of criminal misconduct to either the State Bureau of  
22 Investigation or the District Attorney for the county where the alleged  
23 misconduct occurred.
- 24 (2) Allegations of possible violations of Chapter 138A, Chapter 120C, and  
25 Article 14 of Chapter 120 of the General Statutes to the State Ethics  
26 Commission.
- 27 (3) Allegations of possible violations of Chapter 163 of the General  
28 Statutes to the State Board of Elections.

29 (c) All records maintained by the Auditor of reports of unsubstantiated  
30 allegations of improper governmental activities shall be destroyed within four years  
31 from the date the unsubstantiated allegation was received."

32 **SECTION 2.** G.S. 147-64.6(c) is amended by adding a new subdivision to  
33 read:

34 "(c) The Auditor shall be responsible for the following acts and activities:

- 35 ...
- 36 (19) Whenever the Auditor believes that information received or collected  
37 by the Auditor may indicate a potential violation of any of the  
38 provisions of Chapter 138A of the General Statutes, Chapter 120C of  
39 the General Statutes, or Article 14 of Chapter 120 of the General  
40 Statutes, the Auditor shall report that information to the State Ethics  
41 Commission and the Secretary of State as appropriate. The Auditor  
42 shall be bound by interpretations issued by the State Ethics  
43 Commission as to whether or not any information reported by the  
44 Auditor under this subdivision involves or may involve a violation of

1 Chapter 138A of the General Statutes, Chapter 120C of the General  
2 Statutes, or Article 14 of Chapter 120 of the General Statutes. Nothing  
3 in this subdivision shall be construed to limit the Auditor's authority  
4 under subdivision (1) of this subsection."

5 **SECTION 3.** G.S. 147-64.6(d) reads as rewritten:

6 "(d) Reports and Work Papers. – The Auditor shall maintain for 10 years a  
7 complete file of all audit reports and reports of other examinations, investigations,  
8 surveys, and reviews issued under ~~his~~ the Auditor's authority. Audit work papers and  
9 other evidence and related supportive material directly pertaining to the work of ~~his~~ the  
10 Auditor's office shall be retained according to an agreement between the Auditor and  
11 State Archives. To promote intergovernmental cooperation and avoid unnecessary  
12 duplication of audit effort, and notwithstanding the provisions of G.S. 126-24, pertinent  
13 work papers and other supportive material related to issued audit reports may be, at the  
14 discretion of the Auditor and unless otherwise prohibited by law, made available for  
15 inspection by duly authorized representatives of the State and federal government who  
16 desire access to and inspection of such records in connection with some matter officially  
17 before them, including criminal investigations.

18 Except as provided ~~above~~ in this section, or upon ~~subpoena issued by a duly~~  
19 ~~authorized court or court official~~ an order issued in Wake County Superior Court upon  
20 10 days' notice and hearing finding that access is necessary to a proper administration of  
21 justice, audit work papers and related supportive material shall be kept  
22 ~~confidential~~ confidential, including any interpretations, advisory opinions, or other  
23 information or materials furnished to or by the State Ethics Commission under this  
24 section."

25 **SECTION 4.** G.S. 138A-12(b) reads as rewritten:

26 "(b) Institution of Proceedings. – On its own motion, in response to a signed and  
27 sworn complaint of any individual filed with the Commission, or upon the written  
28 request of any public servant or any person responsible for the hiring, appointing, or  
29 supervising of a public servant, the Commission shall conduct an inquiry into any of the  
30 following:

- 31 (1) The application or alleged violation of this Chapter.
- 32 (2) For legislators, the application of alleged violations of Part 1 of Article  
33 14 of Chapter 120 of the General Statutes.
- 34 (3) An alleged violation of the criminal law by a covered person in the  
35 performance of that individual's official duties.
- 36 (4) An alleged violation of G.S. 126-14.

37 Upon receipt of a referral under G.S. 147-64.6B or a report under G.S. 147-64.6(c)(19),  
38 the Commission may conduct an inquiry under this section on its own motion.  
39 Allegations of violations of the Code of Judicial Conduct shall be referred to the  
40 Judicial Standards Commission without investigation."

41 **SECTION 5.** G.S. 138A-12(n) reads as rewritten:

42 "(n) Confidentiality. – Complaints and responses filed with the Commission and  
43 reports and other investigative documents and records of the Commission connected to  
44 an inquiry under this ~~section~~ section, including information provided pursuant to

1 G.S. 147-64.6B or G.S. 147-64.6(c)(19), shall be confidential and not matters of public  
2 record, except as otherwise provided in this section or when the covered person or  
3 legislative employee under inquiry requests in writing that the complaint, response, and  
4 findings be made public. Once a hearing under this section commences, the complaint,  
5 response, and all other documents offered at the hearing in conjunction with the  
6 complaint, not otherwise privileged or confidential under law, shall be public records. If  
7 no hearing is held at such time as the Commission reports to the employing entity a  
8 recommendation of sanctions, the complaint and response shall be made public."

9 **SECTION 6.** G.S. 138A-13 is amended by adding a new subsection to read:

10 "(b1) At the request of the Auditor, the Commission shall render advisory opinions  
11 on specific questions involving the meaning and application of this Chapter, Article 14  
12 of Chapter 120 of the General Statutes, and Chapter 120C of the General Statutes and an  
13 affected person's compliance therewith. The request shall be in writing, electronic or  
14 otherwise, and relate to real fact settings or circumstances. If the question involves a  
15 legislator, the Commission shall comply with the provisions of subsection (b) of this  
16 section prior to responding to the Auditor. The Commission shall respond in writing to a  
17 request under this subsection within 60 days of the receipt of all information deemed  
18 necessary by the Commission to render an opinion, except if the question involves a  
19 legislator."

20 **SECTION 7.** G.S. 138A-10 is amended by adding a new subsection to read:

21 "(c) Except as otherwise provided in this Chapter, the Commission shall be the  
22 sole State agency with authority to determine compliance with or violations of this  
23 Chapter and to issue interpretations and advisory opinions under this Chapter. Decisions  
24 and advisory opinions by the Commission under this Chapter shall be binding on all  
25 other State agencies."

26 **SECTION 8.** G.S. 126-85(c) reads as rewritten:

27 "(c) The protections of this Article shall include State employees who report any  
28 activity described in G.S.126-84 to the State Auditor as authorized by  
29 ~~G.S. 147-64.6(c)(16)~~.G.S. 147-64.6B."

30 **SECTION 9.** This act is effective when it becomes law and applies to all  
31 information received or collected by the State Auditor concerning alleged violations of  
32 Chapters 138A or 120C of the General Statutes or Article 14 of Chapter 120 of the  
33 General Statutes on or after January 1, 2007.